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SENATE BILL

No. 1116

Introduced by Senator Scott

(Principal coauthor: Assembly Member Jones)

(Coauthors: Senators Kuehl and Romero)

(Coauthors: Assembly Members Koretz and Pavley)

January 4, 2006

An act to amend Sections 2352, 2540, 2543, 2590, and 2591 of, and to add Sections 2352.5 and 2591.5 to, the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 1116, as amended, Scott. Conservatorships.

(1) Existing law generally authorizes a guardian or conservator to fix the residence of a conservatee or ward within the state without permission of the court, by selecting the least restrictive appropriate setting, as specified, that is in the best interests of the conservatee.

Existing law requires the guardian or conservator to promptly give notice of all changes in the residence of a conservatee or ward.

This bill would revise and recast this provision to permit a guardian or conservator to select the least restrictive appropriate residence of a conservatee or ward. The bill would require a presumption that the least restrictive appropriate residence for the conservatee is the personal residence of that conservatee, except if proven otherwise at a hearing by a preponderance of the evidence. The bill would require a conservator to evaluate the level of care and measures necessary to keep the conservatee in his or her personal residence or explain the limitations or restrictions regarding a return ~~to~~ of the conservatee to his or her personal residence. *The bill would exempt from these provisions conservatees with developmental disabilities for whom the Director of the Department of Developmental Disabilities or a regional center for the developmentally disabled acts as a conservator, as specified.* The bill would require this determination to be made in writing under penalty of perjury. Because the bill would change the definition of the crime of perjury, the bill would impose a state-mandated local program. The bill would require the guardian or conservator to file notice of the change of address for a ward or conservatee in 30 days. The bill would permit the court to waive notice of the change of address in order to prevent harm to the conservatee or ward. The bill would require the Judicial Council to develop one or more forms consistent with this provision by January 1, 2008. If a ward or conservatee is being removed from his or her personal residence, the bill would require the guardian or conservator to give notice 15 days prior to removal, except in an emergency, as specified.

(2) Existing law provides that sales of real or personal property of the estate of a conservatee are subject to authorization, confirmation, or direction of the court, except as otherwise provided and except for the sale of a conservatee's personal residence. In seeking authorization to sell a conservatee's present or former personal residence, the conservator is required to notify the court that the personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee, among other requirements.

This bill would revise the provisions for the proposed sale of the personal residence of a conservatee and require a conservator to publish and post a notice of sale, reappraisal for sale, minimum offer price, and other information related to the sale of the personal

residence, as specified. The bill would delete restrictions regarding the sale of the personal residence of the conservatee related to contracts with and compensation of agents, brokers, and auctioneers, and restrictions regarding the sale of personal property.

(3) Under existing law, the court, in its discretion, may make an order granting a conservator one or more powers, as specified, for the advantage, benefit, and best interest of the estate of the conservatee. These powers include the sale of real property of the estate.

This bill would additionally require that the sale of the personal residence of a conservatee, including the terms of sale, price, and commissions to be paid from the estate, to be in the best interest of the conservatee, that the sale of that personal residence shall comply with requirements for appraisal and minimum offer price, and other conditions, as specified. The bill would prohibit a court from waiving specified requirements regarding appraisals.

(4) This bill would make related, nonsubstantive and clarifying changes.

(5) This bill would become ~~operation~~ *operative* only if SB 1550, SB 1716, and AB 1363 are enacted and become effective on or before January 1, 2007.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2352 of the Probate Code is amended to
- 2 read:
- 3 2352. (a) The guardian may establish the residence of the
- 4 ward at any place within this state without the permission of the
- 5 court. The guardian shall select the least restrictive appropriate
- 6 residence that is available and necessary to meet the needs of the
- 7 ward, and that is in the best interests of the ward.
- 8 (b) The conservator may establish the residence of the
- 9 conservatee at any place within this state without the permission

1 of the court. The conservator shall select the least restrictive
2 appropriate residence, as described in Section 2352.5, that is
3 available and necessary to meet the needs of the conservatee, and
4 that is in the best interests of the conservatee.

5 (c) If permission of the court is first obtained, a guardian or
6 conservator may establish the residence of a ward or conservatee
7 at a place not within this state.

8 (d) An order under subdivision (c) shall require the guardian
9 or conservator either to return the ward or conservatee to this
10 state, or to cause a guardianship or conservatorship proceeding or
11 its equivalent to be commenced in the place of the new residence,
12 when the ward or conservatee has resided in the place of new
13 residence for a period of four months or a longer or shorter
14 period specified in the order.

15 (e) (1) The guardian or conservator shall file a notice of
16 change of residence with the court within 30 days of the date of
17 the change. The conservator shall include in the notice of change
18 of residence a declaration stating that the conservatee's change of
19 residence is consistent with the standard described in subdivision
20 (b). The Judicial Council shall, on or before January 1, 2008,
21 develop one or more forms of notice and declaration to be used
22 for this purpose.

23 (2) The guardian or conservator shall mail a copy of the notice
24 to all persons entitled to notice under subdivision (b) of Section
25 1511 or subdivision (b) of Section 1822 and shall file proof of
26 service of the notice with the court. The court may, for good
27 cause, waive the mailing requirement pursuant to this paragraph
28 in order to prevent harm to the conservatee or ward.

29 (3) If the guardian or conservator proposes to remove the ward
30 or conservatee from his or her personal residence, the guardian or
31 conservator shall mail a notice of his or her intention to change
32 the residence of the ward or conservatee to all persons entitled to
33 notice under subdivision (b) of Section 1511 and subdivision (b)
34 of Section 1822. In the absence of an emergency, that notice shall
35 be mailed at least 15 days before the proposed removal of the
36 ward or conservatee from his or her personal residence. If the
37 notice is served less than 15 days prior to the proposed removal
38 of the ward or conservatee, the guardian or conservatee shall set
39 forth the basis for the emergency in the notice. The guardian or

1 conservator shall file proof of service of that notice with the
2 court.

3 (f) This section does not apply where the court has made an
4 order under Section 2351 pursuant to which the conservatee
5 retains the right to establish his or her own residence.

6 SEC. 2. Section 2352.5 is added to the Probate Code, to read:

7 2352.5. (a) It shall be presumed that the personal residence
8 of the conservatee at the time of commencement of the
9 proceeding is the least restrictive appropriate residence for the
10 conservatee. In any hearing to determine if removal of the
11 conservatee from his or her personal residence is appropriate,
12 that presumption may be overcome by a preponderance of the
13 evidence.

14 (b) Upon appointment, the conservator shall determine the
15 appropriate level of care for the conservatee.

16 (1) That determination shall include an evaluation of the level
17 of care existing at the time of commencement of the proceeding
18 and the measures that would be necessary to keep the
19 conservatee in his or her personal residence.

20 (2) If the conservatee is living at a location other than his or
21 her personal residence at the commencement of the proceeding,
22 that determination shall either include a plan to return the
23 conservatee to his or her personal residence or an explanation of
24 the limitations or restrictions on a return of the conservatee to his
25 or her personal residence in the foreseeable future.

26 (c) The determination made by the conservator pursuant to
27 subdivision (b) shall be in writing, signed under penalty of
28 perjury, and submitted to the court within 60 days of appointment
29 as conservator.

30 (d) The conservator shall evaluate the conservatee's placement
31 and level of care if there is a material change in circumstances
32 affecting the conservatee's needs for placement and care.

33 (e) (1) *This section shall not apply to a conservatee with*
34 *developmental disabilities for whom the Director of the*
35 *Department of Developmental Services or a regional center for*
36 *the developmentally disabled, established pursuant to Chapter 5*
37 *(commencing with Section 4620) of Division 4.5 of the Welfare*
38 *and Institutions Code, acts as the conservator and who receives*
39 *services from a regional center pursuant to the Lanterman*

1 *Developmental Disabilities Act, Division 4.5 (commencing with*
2 *Section 4500) of the Welfare and Institutions.*

3 (2) *Services, including residential placement, for a*
4 *conservatee described in paragraph (1) who is a consumer, as*
5 *defined in Section 4512 of the Welfare and Institutions Code,*
6 *shall be identified, delivered, and evaluated consistent with the*
7 *individual program plan process described in Article 2*
8 *(commencing with Section 4640) of Chapter 5 of Division 4.5 of*
9 *the Welfare and Institutions Code.*

10 SEC. 3. Section 2540 of the Probate Code is amended to read:

11 2540. (a) Except as otherwise provided in Sections 2544 and
12 2545, and except for the sale of a conservatee's present or former
13 personal residence as set forth in subdivision (b), sales of real or
14 personal property of the estate under this article are subject to
15 authorization, confirmation, or direction of the court, as provided
16 in this article.

17 (b) In seeking authorization to sell a conservatee's present or
18 former personal residence, the conservator shall notify the court
19 that the present or former personal residence is proposed to be
20 sold and that the conservator has discussed the proposed sale
21 with the conservatee. The conservator shall inform the court
22 whether the conservatee supports or is opposed to the proposed
23 sale and shall describe the circumstances that necessitate the
24 proposed sale, including whether the conservatee has the ability
25 to live in the personal residence and why other alternatives,
26 including, but not limited to, in-home care services, are not
27 available. The court, in its discretion, may require the court
28 investigator to discuss the proposed sale with the conservatee.
29 This subdivision shall not apply when the conservator is granted
30 the power to sell real property of the estate pursuant to Article 11
31 (commencing with Section 2590).

32 SEC. 4. Section 2543 of the Probate Code is amended to read:

33 2543. (a) If estate property is required or permitted to be
34 sold, the guardian or conservator may:

35 (1) Use discretion as to which property to sell first.

36 (2) Sell the entire interest of the estate in the property or any
37 lesser interest therein.

38 (3) Sell the property either at public auction or private sale.

39 (b) Subject to Section 1469, unless otherwise specifically
40 provided in this article, all proceedings concerning sales by

guardians or conservators, publishing and posting notice of sale, reappraisal for sale, minimum offer price for the property, reselling the property, report of sale and petition for confirmation of sale, and notice and hearing of that petition, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by a personal representative as described in Articles 6 (commencing with Section 10300), 7 (commencing with Section 10350), 8 (commencing with Section 10360), and 9 (commencing with Section 10380) of Chapter 18 of Part 5 of Division 7. The provisions concerning sales by a personal representative as described in the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7 shall not apply to this subdivision.

(c) Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the confirmation hearing, a new appraisal shall be required prior to the confirmation hearing, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the confirmation hearing.

(d) The clerk of the court shall cause notice to be posted pursuant to subdivision (b) only in the following cases:

(1) If posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) If posting of notice of a sale governed by Section 10250 (sales of personal property) is required or authorized.

(3) If posting of notice is ordered by the court.

SEC. 5. Section 2590 of the Probate Code is amended to read:

2590. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to the requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or

1 powers, and if consistent with Section 2591, the guardian or
2 conservator may exercise the granted power or powers without
3 notice, hearing, or court authorization, instructions, approval, or
4 confirmation in the same manner as the ward or conservatee
5 could do if possessed of legal capacity.

6 SEC. 6. Section 2591 of the Probate Code is amended to read:

7 2591. The powers referred to in Section 2590 are:

8 (a) The power to contract for the guardianship or
9 conservatorship and to perform outstanding contracts and thereby
10 bind the estate.

11 (b) The power to operate at the risk of the estate a business,
12 farm, or enterprise constituting an asset of the estate.

13 (c) The power to grant and take options.

14 (d) (1) The power to sell at public or private sale real or
15 personal property of the estate, other than the personal residence
16 of a conservatee.

17 (2) The power to sell at public or private sale the personal
18 residence of the conservatee as described in Section 2591.5. The
19 power granted pursuant to this paragraph is subject to the
20 requirements of Sections 2352.5 and 2541.

21 (e) The power to create by grant or otherwise easements and
22 servitudes.

23 (f) The power to borrow money and give security for the
24 repayment thereof.

25 (g) The power to purchase real or personal property.

26 (h) The power to alter, improve, and repair or raze, replace,
27 and rebuild property of the estate.

28 (i) The power to let or lease property of the estate for any
29 purpose (including exploration for and removal of gas, oil, and
30 other minerals and natural resources) and for any period,
31 including a term commencing at a future time.

32 (j) The power to lend money on adequate security.

33 (k) The power to exchange property of the estate.

34 (l) The power to sell property of the estate on credit if any
35 unpaid portion of the selling price is adequately secured.

36 (m) The power to commence and maintain an action for
37 partition.

38 (n) The power to exercise stock rights and stock options.

39 (o) The power to participate in and become subject to and to
40 consent to the provisions of a voting trust and of a

1 reorganization, consolidation, merger, dissolution, liquidation, or
2 other modification or adjustment affecting estate property.

3 (p) The power to pay, collect, compromise, arbitrate, or
4 otherwise adjust claims, debts, or demands upon the guardianship
5 or conservatorship.

6 (q) The power to employ attorneys, accountants, investment
7 counsel, agents, depositaries, and employees and to pay the
8 expense.

9 SEC. 7. Section 2591.5 is added to the Probate Code, to read:

10 2591.5. (a) Notwithstanding any other provisions of this
11 article, a conservator seeking an order under Section 2590
12 authorizing a sale of the conservatee's personal residence shall
13 demonstrate to the court that the terms of sale, including the price
14 for which the property is to be sold and the commissions to be
15 paid from the estate, are in all respects in the best interests of the
16 conservatee.

17 (b) A conservator authorized to sell the conservatee's personal
18 residence pursuant to Section 2590 shall comply with the
19 provisions of Section 10309 concerning appraisal or new
20 appraisal of the property for sale and sale at a minimum offer
21 price. Notwithstanding Section 10309, if the last appraisal of the
22 conservatee's personal residence was conducted more than six
23 months prior to the proposed sale of the property, a new appraisal
24 shall be required prior to the sale of the property, unless the court
25 finds that it is in the best interests of the conservatee to rely on an
26 appraisal of the personal residence that was conducted not more
27 than one year prior to the proposed sale of the property. For
28 purposes of this section, the date of sale is the date of the contract
29 for sale of the property.

30 (c) Within 15 days of the close of escrow, the conservator
31 shall serve a copy of the final escrow settlement statement on all
32 persons entitled to notice of the petition for appointment for a
33 conservator and all persons who have filed and served a request
34 for special notice and shall file a copy of the final escrow
35 statement along with a proof of service with the court.

36 (d) The court may, for good cause, waive any of the
37 requirements of this section, except the requirements regarding
38 appraisal times in subdivision (b).

39 SEC. 8. This act shall become operative only if Senate Bill
40 1550, Senate Bill 1716, and Assembly Bill 1363 of the 2005–06

1 Regular Session are enacted and become effective on or before
2 January 1, 2007.

3 *SEC. 9. This act, together with Senate Bill 1550, Senate Bill*
4 *1716, and Assembly Bill 1363, shall be known and may be cited*
5 *as the Omnibus Conservatorship and Guardianship Reform Act*
6 *of 2006.*

7 ~~SEC. 9.~~

8 *SEC. 10.* No reimbursement is required by this act pursuant
9 to Section 6 of Article XIII B of the California Constitution
10 because the only costs that may be incurred by a local agency or
11 school district will be incurred because this act creates a new
12 crime or infraction, eliminates a crime or infraction, or changes
13 the penalty for a crime or infraction, within the meaning of
14 Section 17556 of the Government Code, or changes the
15 definition of a crime within the meaning of Section 6 of Article
16 XIII B of the California Constitution.